Bridgestone/Firestone, Inc. *and* Automotive and Allied Industries Employees, Teamsters, Local 481, International Brotherhood of Teamsters. Cases 21–CA–31471 and 21–CA–31592

September 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On September 19, 1997, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs, as well as answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.

During the relevant period the Union represented employees of the Respondent in two separate bargaining units, the "ten-store unit" and the "three-store unit." On July 31, 1996, the Respondent withdrew recognition from the Union in the ten-store unit, to be effective August 1, 1996.[2] On September 24, the Respondent withdrew recognition from the Union in the three-store unit, to be effective October 31. The withdrawals of recognition were based on petitions that the Respondent received stating that the employees no longer wanted union representation. We agree with the judge's conclusions, inter alia, that the petitions were tainted by the Respondent's unfair labor practices. As explained below, we conclude that the petition in the ten-store unit was tainted by unfair labor practices that occurred in that unit, and that the petition in the three-store unit was tainted by unfair labor practices which occurred in both units.

As an initial matter, we reject the position of the Respondent and our dissenting colleague that certain of the alleged unfair labor practices found by the judge are time barred by Section 10(b). At the close of hearing, the judge permitted the General Counsel to amend the complaint to add allegations that the Respondent: (1) engaged in direct dealing by telling employees that it would not release their addresses to the Union unless the employees authorized it to do so; and (2) unlawfully solicited employees to initiate or sign a decertification petition. Our dissenting colleague contends, however, that these new allegations were not closely related to any timely allegations, including the refusal to bargain allegation, set forth in the underlying charges. However, contrary to our dissenting colleague, as all of the conduct alleged in the amended complaint occurred within a period of several months and was essentially alleged to be part of an overall plan for the Respondent to rid itself of the Union, the conduct satisfies the tests of relatedness with respect to legal theory, factual circumstances, and the Respondent's defenses. See *Ross Stores*, 329 NLRB 573, 574–575 (1999).

Our dissenting colleague also would dismiss these allegations because they were not included in the complaint. We reject this argument. Where a complaint fails to allege that specific conduct violates the Act, the Board may find a violation provided that the matter was fully litigated at the hearing. See *Cherry Hill Textiles*, 309 NLRB 268 (1992), enfd. 7 F.3d 221 (2d Cir. 1993). See also *Atlanta Newspapers*, 264 NLRB 878, 879 (1982). Here, the Charging Party announced in its opening statement that it anticipated that the Respondent would take the position that its withdrawal of recognition was justified by a loss of majority status reflected in the employee petitions. The Charging Party stated that, once the Respondent presented this evidence, the Charging Party would present evidence showing that supervisory personnel had "participated in precipitating (sic) those documents." Further, the Charging Party stated that it would be willing to give the Respondent the names of the supervisors involved in that conduct. At the end of the hearing the judge granted the General Counsel's motion to amend the complaint, as noted above. Over the course of the hearing all the facts relevant to the allegations had been fully litigated. The judge, nonetheless, offered the Respondent an extension of time, including a recess, to produce other evidence with regard to new allegations, specifically direct dealing and soliciting employees to initiate or sign a decertification petition. After a recess, the Respondent restated its objections to the timeliness of the amendment but explicitly stated that it did not request a postponement to present additional evidence. Accordingly, the Respondent cannot claim that it is prejudiced by the finding that it violated Section 8(a)(1), as alleged.

Having found that certain of the unfair labor practices found by the judge are not time barred, we turn to the issue of whether those and other unfair labor practices tainted the petitions. In *Master Slack Corp.,* 271 NLRB 78, 84 (1984), the Board weighed the following factors in determining whether there was a causal relationship

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All dates hereafter are 1996 unless otherwise indicated.

between unfair labor practices and a petition for decertification:

> (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. Id.

Applying these factors here, we find a causal relationship between the Respondent's unfair labor practices and the expressions of employee dissatisfaction with the Union upon which the Respondent based its withdrawals of recognition from the Union. While it may not have been the Respondent's conduct that first sparked employee dissatisfaction with the Union, the Respondent nurtured the initial spark into fire when, on May 10, Johan Gallo, the Respondent's West Coast human resources manager, and District Manager Scott Hook seized upon employee Troy Foster's report of some employee discontent in the ten-store unit and commenced a course of unlawful conduct that reasonably tended to cause the employees in both units to reject the Union as their bargaining representative.

With respect to the ten-store unit, beginning in mid-May, Gallo and Hook visited seven of the stores in the unit and, in violation of Section 8(a)(1) of the Act, directly solicited employees to sign decertification petitions. As the judge found, this solicitation included unlawful promises of better benefits, including enhanced holiday and sick leave, if the employees went nonunion. The Respondent also unlawfully refused to comply fully with the Union's May 6 information request concerning the ten-store unit, and, in disregard of the Union's status as the employees' exclusive representative, unlawfully dealt directly with employees in May, June, and July over the Union's request for their home addresses.[3] These unfair labor practices commenced less than 3 months prior to the Respondent's July 31 withdrawal of recognition in the ten-store unit and continued unremedied through that date. See *Americare Pine Lodge Nursing & Rehabilitation Center,* 325 NLRB 98, 98–99 (1997), enf. denied in relevant part sub nom. *Americare Pine Lodge Nursing & Rehabilitation Center v. NLRB,* 164 F.3d 867 (4th Cir. 1999) (employer's direct dealing with employees throughout July and August tainted withdrawal of recognition announced in September and made effective in December).

The Respondent's unfair labor practices—particularly its solicitation of employees to sign and circulate the decertification-type petitions, promises of enhanced benefits, and direct dealing with employees—clearly are of a type that tend to have a lasting effect on employees and cause employee disaffection from a union. See *Anderson Enterprises*, 329 NLRB 760, 764 (1999) (direct dealing and promise of bonus if employee circulated antiunion petition "are clearly likely to undermine support for a union"). Indeed, although employee Foster had suggested to the Respondent in late April or early May that there was some employee discontent with the Union, the first dated signature on the petitions was not obtained until 2 days after the commencement of Gallo's and Hook's unfair labor practices on May 10.[4]

Further, the Respondent's unlawful conduct is of a character that reasonably tends to have a negative effect on organizational activities and union membership. Promises of enhanced benefits in the absence of a union tend to discourage union activity because such promises send the unmistakable message that union representation is not only unnecessary, but that it is an obstacle, as opposed to a means, to achieving higher wages and benefits. Direct dealing with employees, moreover, tends to exacerbate this negative impact on union activity because it confirms the employer's willingness to deal with employees outside the collective-bargaining process. See *Americare Pine Lodge Nursing*, 325 NLRB at 98–99 (direct dealing taints subsequent withdrawal of recognition because it leads employees to believe that rejection of union representation is the turnkey to better benefits).

For all of these reasons, we agree with the judge that the Respondent's unfair labor practices tainted the petitions underlying the Respondent's July 31 withdrawal of recognition from the Union in the ten-store unit, thereby making that withdrawal violative of Section 8(a)(5) and (1) of the Act.

For substantially similar reasons, we agree with the judge's further conclusion that the Respondent's September 26 withdrawal of recognition from the Union in the three-store unit was unlawful as well. Significantly, the Respondent engaged in much of the same unlawful conduct in the three-store unit. The Respondent dealt directly with members of the three-store unit by telling

[3] The collective-bargaining agreement for the ten-store unit was due to expire on July 31. By letter dated May 6, the Union communicated its desire to reopen the agreement to the Respondent and requested certain information, including employees' home addresses. The Respondent told the employees that it would not release their addresses to the Union unless they signed statements authorizing it to do so. This occurred in spite of the fact that the Respondent had previously provided employees' addresses to the Union without such authorization.

[4] Some of the signatures are undated.

them that it would not release their addresses to the Union unless they signed statements authorizing it to do so.[5] Thus, as it did in the ten-store unit, the Respondent interjected itself between the Union and the employees in the three-store unit in violation of Section 8(a)(5) and (1) of the Act, causing the same negative effects on the Union and its relationship with the employees described above.

The Respondent's unlawful refusal to comply with the Union's August 26 request for information concerning the three-store unit likewise had a reasonable tendency to induce dissatisfaction with the Union. John Gill, the Respondent's senior union relations representative, admitted that he did not respond to the Union's request because he had information that the employees were considering getting "rid of the Union." But at the time, in late August and through September, Gill had no objective basis for questioning the Union's majority support. Thus, he consciously and unjustifiably delayed in responding to the Union's request to give employee discontent with the Union, which the Respondent had helped to create, time to fester.

It is reasonable to conclude, moreover, that Gill's actions actually further stoked employee discontent with the Union during this period because the information was requested specifically to help the Union to prepare for negotiations. The parties had scheduled a bargaining session for October 9 and, as noted above, the contract was due to expire on October 31. By refusing to provide the requested information, the Respondent impeded the Union's ability to contact employees and to prepare for the upcoming negotiations. That conduct too thus reasonably tended to create the impression among employees that the Union was ineffectual.

In sum, the Board has stated that "an employer who engages in efforts to have its employees repudiate their union must be held responsible for the foreseeable consequence of its conduct." *Hearst Corp.,* 281 NLRB 764, 765 (1986), enfd. 837 F.2d 1088 (5th Cir. 1988), rehearing denied 840 F.2d 15 (5th Cir. 1988). Here, in accordance with *Master Slack*, supra, we have considered the timing and nature of the Respondent's unfair labor practices, and have found that, by this misconduct, the Respondent set in motion a chain of events that resulted in the employees in both units signing petitions repudiating the Union. Accordingly, we conclude that the Respondent's withdrawals of recognition from the Union based on those petitions violated Section 8(a)(5) and (1) of the Act.

[5] This occurred before the Union, on August 26, requested from the Respondent home addresses for the employees in the three-store unit. The collective-bargaining agreement for the three-store unit was due to expire on October 31.

Finally, we also agree with the judge, for the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In the *Vincent* case, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's withdrawal of recognition. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, we note that, in addition to unlawfully withdrawing recognition, Respondent failed to furnish information requested by the Union; promised better benefits to employees if they rejected the Union; dealt directly with employees by requiring them to sign forms to release their home addresses to the Union; and solicited employees to initiate and sign decertification petitions. These actions clearly signaled to the employees the Respondent's continuing disregard for their bargaining representative. Although several years have elapsed

since these unfair labor practices were committed, the seriousness of these violations in undermining employee support for the Union would likely have a long-lasting effect.

We further note that, as found by the judge, the March 12, 1996 decertification petition did not reflect employee free choice under Section 7, but rather the effect of the Respondent's serious prewithdrawal unfair labor practices described above. We find that these additional circumstances further support giving greater weight to the Section 7 rights that were infringed by the Respondent's unlawful withdrawal of recognition.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining or to engage in any other conduct designed to further discourage support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took several years and many of the Respondent's unfair labor practices were likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the employees in each bargaining unit and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information requested on May 6, 1996, for the ten-store unit and on August 26, 1996, for the three-store unit. In addition**,** the Respondent shall make whole all employees who suffered financial loss as a result of unilateral changes to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1978).[6]

We shall also modify the judge's cease-and-desist remedial provisions to provide for a narrow order as the Respondent's unfair labor practices do not warrant imposition of a broad order. *Hickmott Foods*, 242 NLRB 1357 (1979).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Bridgestone/Firestone, Inc., San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employees to sign decertification petitions and promising employees more favorable benefits if they signed such petitions.

(b) Dealing directly with employees and bypassing the Union by requiring employees to sign authorization forms specifically permitting disclosure of requested necessary and relevant bargaining unit information before providing it to the Union.

(c) Withdrawing recognition from the Union in the ten-store bargaining unit and in the three-store bargaining unit and thereafter refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in those units.

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[6] The parties, at hearing, stipulated that there were changes in the wage rates paid to some employees in the ten-store unit after July 31 and changes in the wage rates paid to some employees in the three-store unit after October 31.

The Charging Party has also excepted to the judge's failure to provide that it be made whole for the Respondent's failure to honor its dues-checkoff obligations after withdrawing recognition from the Union. The complaint does not allege such an allegation, nor was the issue fully and fairly litigated in the course of this proceeding. Moreover, there are no exceptions to the judge's findings that the collective-bargaining agreements in the ten-store and three-store units expired July 31 and October 31, 1996, respectively. Because the checkoff provisions do not survive expiration of the contracts, the Respondent has no obligation, under the collective-bargaining agreements at issue, to continue to check off dues after these dates. See *Hacienda Resort Hotel & Casino*, 331 NLRB No. 89 (2000). Accordingly, we find no merit in the Charging Party's exceptions.

(d) Failing and refusing to furnish the Union with information it has requested which is necessary and relevant to the Union in the performance of its duties as the exclusive collective-bargaining representative of the employees in the appropriate unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in each of the following appropriate units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(1) The following employees of Respondent (the ten-store unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All mechanics and tire service employees employed by the Respondent at its facilities located at 2531 Plaza Boulevard, National City, California (store #2241), 8788 Navajo Road, San Diego, California (store #2242), 830 Broadway, Chula Vista, California (store #2243), 5577 Lake Murray Boulevard, La Mesa, California (store #2244), 943 Highland Avenue, National City, California (store #2245), "A" Bernardo Drive, Rancho Bernardo, California (store #2246), 1136 "C" Street, San Diego, California (store #2247), 9690 Reagan Road, Mira Mesa Shopping Center, San Diego California (store #2249), 1245 Garnet Avenue, San Diego California (store #2250), and 9763 Mission Gorge Boulevard, Santee, California (store #2251); excluding salesmen, office and clerical employees, watchmen, guards and supervisors as defined in the Act.

(2) The following employees of Respondent (three-store unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All mechanics and tire service employees employed by the Respondent at its facilities located at 1454 Union Street, San Diego, California (store #2253), 435 North 2nd Street, El Cajon, California (store #2254), and 4161 Convoy Street, San Diego, California (store # 2255); excluding salesmen, office and clerical employees, watchmen, guards and supervisors as defined in the Act.

(b) Furnish the Union with information requested on May 6, 1996, for the ten-store unit and on August 26, 1996, for the three-store unit: A list of all current bargaining unit employees, their current home addresses, dates of hire, job classification, company seniority, classification seniority, and current rates of pay, including premium pay where applicable.

(c) Make whole the employees in the ten-store unit and the three-store unit, with interest, for any loss of earnings and other benefits they may have suffered by the Respondent's unlawful refusal to apply the terms and conditions of employment set forth in the collective-bargaining agreements, which expired July 31, 1996, and October 31, 1996, respectively, until such time as Respondent bargains in good faith to impasse or enters into a collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at all its facilities in the appropriate bargaining units described above, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since May 10, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting in part.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

My colleagues conclude that the Respondent engaged in 8(a)(1) and 8(a)(5) violations which allegedly tainted decertification petitions. However, as discussed below, I conclude that these allegations are not properly a part of this case. First, the complaint does not allege these violations. Second, even if the complaint were deemed to allege these violations, such complaint allegations are not supported by a timely charge.

I. DEFICIENCIES OF THE COMPLAINT

As to the allegations in the complaint, a promise of benefit was *never* alleged. Further, allegations of direct dealing and solicitation of decertification petitions were alleged only at the very end of the hearing. Of course, it is essential to due process that a respondent be given notice of the allegations *before* the respondent is called upon to present its defense. In that way, a respondent can defend itself. This was not done in this case. As noted in my dissent in *Dico Tire, Inc*, 330 NLRB 1252, slip op. at 4 (2000), the General Counsel should make any amendments to the complaint *before* the hearing or, at least, at the conclusion of his case-in-chief, so as to give the respondent adequate time for defense preparation. Here, the amendment came at the close of the hearing. Further, in his opening statement, the General Counsel pointed only to the alleged refusal to furnish information as the unfair labor practice which tainted the decertification petition. My colleagues note that the *Charging Party* stated, at the opening of the hearing, that it (Charging Party) intended to adduce evidence of the Respondent's supervisors' involvement in the instigation of the decertification petitions. Of course, it is the *General Counsel* who controls what is to be alleged to be unlawful. Here, the General Counsel did not include the allegation in the complaint, and declined to amend the complaint to include the allegation after the Charging Party mentioned it.

Concededly, the General Counsel later sought to amend the complaint, but only after the conclusion of the hearing. I recognize that, at that point, the Respondent could have asked for more time to rebut the new allegations. However, my point concerns the orderliness of litigation. A complaint should make the appropriate allegations, and *then* the evidence should be heard, not vice-versa. Particularly where, as here, the General Counsel knows (*before* the evidence is adduced) of the alleged misconduct, he should not wait until *after* the evidence is adduced to make his allegations.[1]

II. DEFICIENCIES OF THE CHARGE

Even assuming arguendo that the complaint was effectively amended to include the allegations of solicitation to sign decertification petitions, promises of benefits, and direct dealing, these allegations are not contained in the charges.

The underlying charges in this case allege only that the Respondent refused to bargain collectively with the Union. There is also included in the charges a "boilerplate" allegation that the Respondent "by these and other acts and conduct" interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act. As to the "refusal to bargain" allegation, the charge regarding each of the units was filed on the heels of the withdrawal of recognition, and thus these charge allegations have reference to that conduct. As to the "boilerplate" allegations, the Board stated in *Nickles Bakery*, 296 NLRB 927, 928 (1989), that allowing the boilerplate "other acts" language to support 8(a)(1) complaint allegations contravenes Section 10(b)'s mandate that the Board "not originate a complaint on its own initiative." Thus, the conduct that allegedly tainted the petition was not included in the allegations of the charges.

Nor are the complaint allegations (assumed arguendo) "closely related" to the charge allegations. Under *Redd-I, Inc.*, 290 NLRB 1115 (1988), the Board examines three factors to determine whether an allegation is closely related to the allegations in a timely filed charge: (1) whether the allegations involve the same legal theory and the same Section of the Act; (2) whether the allegations arise from the same factual circumstances or sequence of events; and (3) whether a respondent would raise similar defenses to the two sets of allegations.

As to the first factor, the charge alleges an 8(a)(5) withdrawal of recognition. The complaint alleges various 8(a)(1) violations. The 8(a)(5) allegation is based on the legal theory that the Union is the legal representative, and that the withdrawal of recognition was unlawful. The 8(a)(1) allegations are based on the principle that statements were made, and that they interfered with Section 7 rights.

As to the second *Redd-I* factor, the allegation of the charge was a refusal to bargain. Such refusals occurred on August 1 and September 24. The complaint allegation of direct dealing was based on a letter, signed by Manager Hook and faxed to each store on June 5, informing employees of the Union's information request

[1] *Cherry Hill Textiles*, 309 NLRB 268 (1992), enfd. 7 F.3d 221 (2d Cir. 1993), is clearly distinguishable. In that case, the original complaint alleged the facts constituting the violation. That is not true in the instant case. Similarly, *Atlanta Newspapers*, 264 NLRB 878, 879 (1982), is clearly distinguishable. In that case, the original complaint alleged an 8(a)(3) discharge. The General Counsel was permitted to allege later that the same discharge also violated Sec. 8(a)(1). That situation bears no resemblance to the instant case.

and stating that it would not release the addresses unless the employees authorized it to do so. The alleged promise of benefit occurred in May, as did the solicitation of a decertification petition and the direct dealing.

Finally, the defenses to each of these allegations also differ materially. The defense to the allegations of refusal to bargain is a showing that a majority of unit employees in each unit had signed decertification petitions. Defenses to the allegation of direct dealing would include evidence that the conduct at issue did not occur or evidence that the Respondent had a genuine basis for being concerned for the safety and confidentiality of employees if the information fell into the hands of the Union. With respect to the 8(a)(1) allegations, the defense would be evidence that the conduct had not occurred, or that it did not interfere with, coerce or restrain the exercise of a Section 7 right.[2]

Thus, under the test of *Redd*-I, I conclude that the complaint and amendment to the complaint went beyond the scope of the charges and are not closely related to any timely filed charge. They are therefore barred by Section 10(b).

As I have concluded that the alleged tainting conduct is not properly before the Board (except perhaps the refusal to give information), I find that the petitions were not tainted by unfair labor practices. I therefore find that the Respondent had a good-faith doubt as to the majority status of the Union in both of the units, based on decertification petitions signed by a majority of employees in those units. Therefore I would dismiss the allegations that the Respondent has unlawfully withdrawn recognition from the Union.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit our employees to sign a petition to decertify the Union.

WE WILL NOT deal directly with employees and bypass the Union by requiring employees to sign authorization forms specifically permitting disclosure of requested, necessary, and relevant bargaining unit information before providing it to the Union.

WE WILL NOT withdraw recognition from, or refuse to bargain collectively with, Automotive and Allied Industries Employees, Teamsters, Local 481, International AFL–CIO as the representative of our employees in the appropriate units described as follows.

(1) The following employees of Bridgestone/Firestone, Inc. (the ten-store unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All mechanics and tire service employees employed by us at our facilities located at 2531 Plaza Boulevard, National City, California (store #2241), 8788 Navajo Road, San Diego, California (store #2242), 830 Broadway, Chula Vista, California (store #2243), 5577 Lake Murray Boulevard, La Mesa, California (store #2244), 943 Highland Avenue, National City, California (store #2245), "A" Bernardo Drive, Rancho Bernardo, California (store #2246), 1136 "C" Street, San Diego, California (store #2247), 9690 Reagan Road, Mira Mesa Shopping Center, San Diego California (store #2249), 1245 Garnet Avenue, San Diego California (store #2250), and 9763 Mission Gorge Boulevard, Santee, California (store #2251); excluding salesmen, office and clerical employees, watchmen, guards and supervisors as defined in the Act.

(2) The following employees of Bridgestone/Firestone, Inc. (the three-store unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All mechanics and tire service employees employed by us at our facilities located 454 Union Street, San Diego, California (store #2253), 435 North 2nd Street, El Cajon, California (store #2254), and 4161 Convoy Street, San Diego, California (store # 2255); excluding salesmen, office and clerical employees, watchmen, guards and supervisors as defined in the Act.

WE WILL NOT refuse and fail to furnish the Union with the following information requested on May 6, 1996, for the ten-store unit and on August 26, 1996, for the three-store unit: A list of all current bargaining unit

[2] The refusal to give information is arguably "closely related" to the withdrawal of recognition. However, there is no showing that this alone caused the disaffection.

employees, their current home addresses, dates of hire, job classification, company seniority, classification seniority, and current rates of pay, including premium pay where applicable.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the bargaining units described above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, furnish the Union with the following information requested on May 6, 1996, for the ten-store unit and on August 26, 1996, for the three-store unit: A list of all current bargaining unit employees, their current home addresses, dates of hire, job classification, company seniority, classification seniority, and current rates of pay, including premium pay where applicable.

WE WILL make whole the employees in the ten-store unit and the three-store unit, with interest, for any loss of earnings and other benefits they may have suffered as a result of our unlawful refusal to apply the terms and conditions of employment set forth in the collective-bargaining agreements, which expired July 31, 1996, and October 31, 1996, respectively, until such time as we bargain in good faith to impasse or enters into a collective-bargaining agreement.

BRIDGESTONE/FIRESTONE, INC.

Neil A. Warheit, Esq., for the General Counsel.
Brian West Easley, Esq. (Jones, Day, Revis & Pouge), of Dallas, Texas, for the Respondent.
Richard D. Prochazka, Esq. (Prochazka & Associates), of San Diego, California, for theCharging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in San Diego, California, on June 12 and 13, 1997. The original charge in Case 21–CA–31471 was filed on July 31, 1996, by Automotive & Allied Industries Employees, Teamsters, Local 481, AFL–CIO (the Union), and the original charge in Case 21–CA–31592 was filed by the Union on September 26, 1996. On February 28, 1997, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing alleging violations by Bridgstone/Firestone, Inc. (the Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent, in its answer to the complaint, denies that it has violated the Act as alleged.

The complaint was amended at the hearing and two additional items alleged to be violative of Section 8(a)(1) and (5) of the Act, litigated fully during the course of the proceeding, were included: that the Respondent unlawfully engaged in direct dealing with the employees by requesting them to sign a statement if they did not want their addresses furnished to the Union pursuant to the Union's request for information; and by soliciting employees to sign decertification petitions.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (the General Counsel) and counsel for the Respondent. On the entire record,[1] and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the retail sale of tires and the servicing of automobiles, and operates retail stores throughout the United States. In the course and conduct of its business operations, the Respondent derives gross revenues in excess of $500,000, and receives at its California locations goods valued in excess of $50,000 either directly from points outside the State of California, or directly from other enterprises located in the State of California which, in turn, purchase and receive the same goods directly from points outside the State of California. It is admitted and I find that the Respondent is engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

The principal issue raised by the pleadings is whether the Respondent has violated Section 8(a)(1) and (5) of the Act by causing employees to sign decertification petitions and thereafter withdrawing recognition from the Union in two separate units at a time when the Union continued to be the exclusive collective bargaining representative of the employees in each unit; and by failing to furnish certain employee information requested by the Union for the purposes of collective bargaining.

B. The Facts

The Respondent has maintained a collective bargaining relationship with the Union for approximately 40 years. The Union has represented certain mechanics and tire service employees of the Respondent in two separate units in the San Diego, California area (the ten-store unit) and (the three-store unit). Separate

[1] The General Counsel's unopposed motion to correct the transcript is granted.

collective-bargaining agreements for each unit expired at different times, the contract in the ten-store unit expiring on July 31, 1996, and the contract in the three-store unit expiring on October 31, 1996.[2]

On May 6, Business Agent and Organizer Bruce Darby sent the Respondent, in the same envelope, a contract reopener letter and a separate letter requesting the following bargaining unit information:

> In preparation for negotiations. . . . lease furnish the Union with the following information:
>
> A list of all current bargaining unit employees, their current home addresses, dates of hire, job classification, company seniority, classification seniority, and current rates of pay, including premium where applicable.

Darby testified that in about mid-May, he received several phone calls from unit members who advised him that representatives of the Respondent were going around to some of the stores in the ten-store unit and soliciting members to decertify the Union. On about June 12, Darby phoned John Gill, the Respondent's labor relations representative, and informed him that District Manager Scott Hook and Human Resources Manager Johan Gallo were attempting to cause employees to decertify the Union, and that Darby wanted them to stop such unlawful interference. Gill said that he would contact Hook and Gallo and tell them to discontinue such activities. During the same conversation, Darby told Gill that he wanted the requested bargaining unit information he had asked for in his May 6 letter as the initial negotiating session for the ten-store unit had been scheduled for July 24, and Darby wanted to communicate with the employees prior thereto in order to prepare bargaining proposals. Up to that point he had received no information. Gill replied, according to Darby, that the Union was entitled to the information and that he would contact the San Diego District Office and tell them to provide the information.

Darby did not receive such information until July 15, by fax from Kim Garcia, administrative assistant at the San Diego district office. The list was not complete and only contained 51 names, although there were known to be over 60 unit members in the ten-store unit; further, the addresses of many named employees were not included. Because of frequent employee turnover and the fact that the Respondent did not regularly forward accurate monthly information to the Union, Darby did not know how many unit employees were in the ten-store unit at the time, or their current addresses. In earlier bargaining negotiations, in 1993, similar information was requested and addresses were not deleted. Nor had the Respondent ever raised any issue of employee privacy or confidentiality with Darby during the many years of the collective bargaining relationship.

A bargaining session in the ten-store unit was held on July 24, as scheduled. Scott Hook, John Gill and Johan Gallo represented the Respondent. Apparently, the meeting was simply an introductory session and bargaining, if any, was abbreviated. Another meeting was scheduled for August 27.

However, no further meetings were held, as on July 31, 1996, Darby received a letter from the Respondent canceling the scheduled bargaining meeting and stating that subsequent to the July 24 bargaining session the Respondent had received petitions signed by a majority of unit employees stating that they no longer wished to be represented by the Union and that, "[p]ursuant to the petitions and other objective considerations showing absence of majority support, the law prohibits us from negotiating for a successor agreement, and the Company withdraws recognition of Local 481 effective August 1, 1996."

Regarding the three-store unit, Darby sent a similar reopener letter dated August 26, and also, in order to prepare for negotiations, requested similar bargaining information, namely, "A list of all current bargaining unit employees, together with their current home address, date of hire, job classification, company seniority, classification seniority, and current rate of pay including premium pay where applicable."

A meeting was set up for bargaining in this three-store unit but it was not held, as the Respondent, by letter dated September 24, stated that it had received a petition signed by a majority of the unit employees that they no longer desired to be represented by the Union; therefore the Respondent canceled the negotiating session scheduled for October 9, and stated that it would continue to recognize the union and honor the agreement only through its October 31 expiration date.

Kim Garcia is administrative assistant for District Manager Scott Hook. Garcia testified that in May the Respondent received a request for information from the Union regarding the ten-store unit, and that she contacted Human Resources Director Gallo about the request. Gallo, in turn, referred Garcia to John Gill. It was ultimately decided that the Respondent should send out an authorization request to the employees prior to volunteering their addresses to the Union. Garcia testified that in other situations, not involving the Union, she customarily does not give out such information without authorization. Thereupon, a notice issued by District Manager Hook was faxed to each store wherein the Respondent asked for permission of each employee prior to giving out their address to the Union. The notice, dated June 5, is as follows:

> In preparation for the upcoming negotiations, the Union (Local 481) has requested your current address, date of hire, job classification, company seniority and current rate of pay.
>
> In compliance with the Union's request, we will be glad to furnish them with all the information they request, EXCEPT, your home address. In order to provide the Union with your home address, it will take your authorization for Firestone to release that information..
>
> If you agree to authorize Firestone to release your home address, please sign and date below and return it to your Store Manager for mailing to the District Office.

Thereafter, each union employees was required to sign a statement either giving permission or denying permission for the Respondent to disclose his or her home address to the Union,

Garcia testified that a similar request for information was received for the three-store unit on August 26, and Garcia again contacted Gallo. Gallo told her that the Respondent had broken

[2] All dates or time periods hereinafter are within 1996 unless otherwise specified.

off negotiations with the Union and had declined to recognize the Union, and that there was to be no further contact with the Union unless she was notified otherwise. Therefore, she did not furnish any information to the Union regarding the three-store unit.

According to Garcia, the process of obtaining employee authorization from employees in the ten-store unit took some time and it was not until July 3, that she faxed the requested information, except for the addresses of employees who did not authorize such disclosure, to the Union. After a subsequent conversation during which the Union denied having been furnished the information, she again faxed the same information on July 15.[3]

Garcia testified that at some point she began receiving some phone calls from employees who asked her "how to get out of the Union." She advised Hook about the calls, and Hook, after inquiring about what to do, later told her to refer such employees to the National Labor Relations Board; however, it appears that, instead, employees were referred to the Respondent's headquarters.

In May, June, and July, according to Garcia, the following problem arose. Employees were not signing up with the Union as they were required to do under the union-security clause in the contract. Thus, during the new hire orientation Garcia would tell them that it was their obligation to go to the union hall and sign up. They were also told the amount of their initiation fee and monthly union dues. However, many of the new hires neglected to do this, and the Union, discovering that such employees had been hired but had not become union members, began sending out letters to the various store mangers telling them that certain employees had not signed up. The store managers then required these employees to sign up, after which the Union assessed them back dues from the time they became employed; sometimes such back dues amounted to as much as $200. Later, according to Garcia, the union representative brought the registration cards and payroll authorization cards to her so that she could have the employees fill them out during the orientation and mail them in. This process was initiated in about late May. The registration cards contained the employee's name, address, phone number, store number, classification code, and the amount they were earning. Garcia had these forms filled out by all new employees and provided the information to the Union in May, June, and July.

Garcia admitted that the list of names of unit members in the ten-store unit that she sent to the Union was not complete. Thus, Garcia testified that two new unit employees had not signed up with the Union and were not on the list. Further, the list may not have been "real accurate" because terminated employees may have been inadvertently left on the list. However, Garcia testified that, "I would say it's about 90 percent accurate."

Garcia testified that the payroll department would provide the Union with an employee's change of address only if the Union asked for it; therefore the Union would not automatically receive such information and, unless notified directly by the employee, would not know the employee's current address. Further, Garcia's policy in not automatically disclosing such information might have been different than the policy of the payroll department. She was unable to explain the rationale for the two conflicting policies, and maintained that it had always been her practice to ask employees for their permission to give the Union any personal information.

Troy Foster, called as a witness by the Respondent, is currently employed by the Respondent and has been a technician at the Pacific Beach store for 3 years. Foster testified that during the course of general conversations over lunch or a cigarette with five or six employees at the store, certain of them began expressing their opinion that the Union wasn't doing them any good, that there was no contact with the Union, that they received nothing in the mail from the Union, and that they were basically unhappy with the union representation they were paying for. As a result, Foster asked his store manager what could be done, and subsequently the manager gave him a phone number to call. The number was that of the Respondent's Rolling Meadows, Illinois headquarters and, according to Foster, upon talking with someone[4] "they faxed me basically the words that are in the petition that I wrote." He did this of his own volition and had no meetings with management representatives; nor were there any promises or threats made.

Foster testified that in about the beginning of June, he went around to four other stores and talked to the employees there. He would ask some of the store managers whether he could talk to the people and he was given permission to speak to them during their working time; however, according to Foster, the employees didn't want any involvement with the petition and there were only one or two employees who signed the petition in his presence. Thus, according to Foster, "Most of the stores that I went to nobody would sign [the petitions]." However, he believes that his efforts "started a lot of talk about the Union and all that." At some point Foster obtained an employee benefits booklet from Garcia containing the benefits for employees of the Respondent's nonunion stores, as the unit employees were concerned about the benefits they would receive as nonunion employees.

Foster left one petition at one of the stores he visited and mailed another petition containing some signatures to the Respondent's headquarters in Rolling Meadows where the Company's labor relations department is located.

Although Foster testified that he could not recall whether he circulated the petitions before or after Hook and Gallo came to his store, infra, to talk about the situation, the petition he circulated is dated June 6.[5] However, according to Foster, at some point Hook and Gallo did come out to his store and spoke to the employees: Foster testified that "I believe it was about the benefits of non-Union stores I think. They didn't really speak about it but they told us there's things in the works about it. . . . Yeah. That they were putting it together or something . . . The company was putting it together."

[3] Garcia testified that although she has the fax confirmation for July 15, she does not have the July 3 confirmation.

[4] Foster did not know the identity of the individual to whom he was referred.

[5] In fact, it appears that none of the petitions were signed earlier than May 12, 2 days following the visit to the stores by Gallo and Hook.

Roger Lutz, since December 1, has been the manager of vehicle services at the C Street store, and through July was a lead technician in one of the stores in the ten-store unit. Lutz testified that he helped with the petitions, as he "has never been appreciative of what the Union has done for the employees," and didn't feel that he was getting his money's worth. He called Troy Foster to find out where to mail the petition.

Charles Cooper was lead technician in the Chula Vista store and has been employed by the Respondent for the past 15 years. Currently, he is a manager of vehicle services, a managerial position. Cooper testified that in May, Scott Hook and Johan Gallo came to his store and asked to meet with him personally. The three of them met in the backroom during working hours. Cooper testified that Hook and Gallo told him that "[t]hey wanted to give us better benefits and stuff," and that if the stores went nonunion "they would be able to give us more benefits." They also told him that, "[t]here's so much more they could do for us." While, according to Cooper, they did not tell him how to get rid of the Union, they did tell him to write a letter to Rolling Meadows about the matter. Cooper testified that he was "a little bit intimidated and nervous" during this meeting as it was the first time either Hook or Gallo had ever approached him for any purpose. Cooper did not testify that Gallo asked him anything about his prior injury or workers' compensation claim, as testified to by Gallo, infra.

Cooper testified that after the meeting with Hook and Gallo he talked to other people in the Chula Vista store about getting rid of the Union. He also talked to an employee named "Jeff" at another store. On May 29, he signed the following document for the Union:

> Was given address to send letter to decertify Union. On or about May 10, 1996 company representatives Mr. Scott Hook and Mr. Johan Gallo asked me to decertify the union. I declare under the penalty of perjury according to the laws of the State of California that the foregoing is true.

Jeffrey Jornlin worked at the National City store as a technician. Jornlin testified that Hook and Gallo came to the store sometime in May and had a meeting with the employees during working time. He listened to only "some of the meeting" as he had cars to work on. He heard Hook or Gallo say that the benefits would not change and would stay the same "if we signed something to get the Union out." At least three other employees were present. Jornlin refused to sign any petition that one of the employees began circulating. Several months later, his store manager asked him what the Union had done for him lately, or words to that effect. Jornlin signed the same statement as Cooper, namely, that on or about May 10, Hook and Gallo asked him to decertify the Union; however, Jornlin testified that they did not use the term "decertify."

Damian Spears was a technician at the National City store. He no longer works for the Respondent. Spears testified that Hook and Gallo came to the store in May and had a meeting with the employees. Jornlin was present. Gallo identified himself as a negotiator. Spears testified that Hook said that the employees didn't need the Union, that Hook's nonunion stores had better sick leave and better holidays, and that there was no advantage to having a union in his company. And Gallo said, "What do you need the Union for, they're no good. They're going to be gone anyhow. And there was really no purpose for the Union there."

According to Spears, either Hook or Gallo said during the meeting that "[b]ecause since we were a Union store that we would have to work three years in order to get three days sick leave. But if I was in a non-Union store you get it within the first year, or something like that, 90 days or the first year." It was also said that the nonunion stores have better holidays. Spears asked where the employees' union representative was, and was told that this was just an unexpected visit and, "it was just between us talking off the record like thing." There was some discussion about benefits and one employee asked what the benefits were in the non-union stores, and Hook and Gallo referred to a benefits booklet that they had with them. According to Spears, "They both kept rattling on about the Union wasn't needed . . . There's no purpose—you know, what are we gaining out of having a Union." Spears asked what was the benefit of not having a union, and Hook replied that things would be better because they would have better benefits. After they left employee Arturo Abenes began circulating a petition to get rid of the Union. Spears told Abenes that he wasn't going to sign anything, and then telephoned Union Representative Darby to advise him of the visit by Hook and Gallo.

Spears testified that a couple of days after the meeting his store manager, Art Estrada, said to him, "Well, they want to get rid of the Union." Spears said that he was not signing the petition and Estrada said, "You do what you've got to do but, you know, they are probably going to get rid of the Union."

Aurturo Abenes Sr., called as a witness by the Respondent, is a lead technician. He has worked for the Respondent for 13 years. He was at the meeting in May, with Hook and Gallo; Spears and Jornlin were also present. Abenes testified that that he did not pay attention to what was being said and was "kind of far" from the discussion, and doesn't recall anything about the discussion that took place. While he "believes" that things were said about what it would be like if there were no union, he was unable to recall any details of the meeting, although he acknowledged that Spears did ask some questions. According to Abenes, neither Hook nor Gallo had an employee booklet or referenced such a booklet. Abenes received a wage increase in about March 1997, of $2 per hour. In 1996, before the withdrawal of recognition, he received a 20-cent-per-hour wage increase.

Matthew Cleland has worked for the Respondent for 9 years. He is a lead technician in the El Cajon store, one of the stores in the three-store unit. Cleland testified that he prepared a petition to remove the Union because he got tired of not being taken care of by the Union and because of dissatisfaction with the prior contracts negotiated by the Union. He talked to all of the employees who signed his petition and physically circulated it among the employees at the three stores on his own time. A total of 14 employees worked at the 3 stores; 7, 3, and 4, respectively. Cleland testified that he had heard about the petitions being circulated in the ten-store unit and phoned an employee, Roger Lutz, who was a bargaining unit employee at one of the stores in that unit, "because I had heard that other stores had sent a petition in and I wanted to do the same." Cleland

testified that he had no discussions with management about the petition, and that no promises or threats were made to him. He got the wording of the petition and the address of the Respondent's headquarters from Lutz. In September he received a wage increase of $1.65 per hour. Prior to that time he had been receiving annual wage increases of 10 to 15 cents per hour in accordance with the union contract.

Jeffrey Prowant is lead technician at the Convoy store, one of the stores in the three-store unit. He signed a petition but did not circulate it. He also signed a demand that the company bargain in good faith.

John Gill was a senior union relations representative with the Respondent until he retired on June 1, 1997. He is now a consultant with the Respondent. Gill testified that he received the decertification petitions near the end of July; each petition was received at the Respondent's headquarters individually, over a period of time. He was aware that there were employees who were not happy with the Union, but did not talk with any employees directly; rather, his information came from Johan Gallo. According to Gill, about 34 out of a unit of about 60 signed the petitions in the ten-store unit, and about 11 out of 15 signed the petition in the three-store unit. Gill testified that at the time of the July 24 negotiating meeting for the ten-store unit the Respondent did not have petitions from a majority of employees. Gill testified that neither he nor his "cohort," Mr. Deadkey, would have given any employee the Respondent's address in Rolling Meadows, Illinois, for the purpose of submitting decertification petitions. Regarding the three-store unit, Gill testified that he prepared a letter withdrawing recognition before he went on vacation because, according to information he received from Gallo, it appeared that a majority of those employees were in favor of decertification.

Johan Gallo is the West Coast human resources manager for the Respondent, and handles all of the human resource functions for the 300 stores in the 10 western States. Gallo testified that the first time he became aware of the decertification issue was when he was contacted by Troy Foster, an employee of the Respondent's Pacific Beach store, during the latter part of April or first part of May.

During this conversation Foster advised Gallo that he had contacted the district office and had been referred to Gallo. Foster said, according to Gallo, that he felt he was expressing the concerns of several employees who believed that they were not being adequately represented by the Union, "and wanted to know what he should do as far as, basically talking to the other employees, what to do to get rid of the union because they were fed up." At some point, Gallo told Foster that one thing he could do would be to contact the NLRB. The other thing to do, according to Gallo, would be to talk to those employees who are disgruntled and have them sign a piece of paper stating that they no longer wanted to be represented by the Union; he did not give Foster specific language. He told Foster to mail the paper to the Respondent's union relations department in Rolling Meadows, Illinois, and that the union relations people would address the matter from that point on. It was a fairly short conversation, during which Gallo apparently gave Foster the address and phone number of the Respondent's headquarters, and thereafter Gallo had no further inquiries from any other employees about the matter. Gallo then called John Gill in Illinois to report and discuss the inquiry by Foster.

About 2 weeks later, on about May 10, Gallo came to the San Diego area to visit the stores and talk with the employees about some of the questions they might have concerning the matters raised by Foster. At this time no petitions had been submitted by Foster. District Manager Hook, who had apparently received other inquiries, told Gallo that the employees had a lot of questions, and he really didn't know how to answer them. They went to Foster's store first and met with him individually. Foster indicated that that he had spoken to several coworkers and there seemed to be growing concern over their frustration with the Union as they were fed up and did not feel that they were getting anything for their money. Foster also said that the employees had questions and invited the two of them to meet with the employees. Gallo testified that his purpose in first going to Foster's store was to follow up on Foster's phone call and answer any questions and, "if that's not needed then I can just leave." Foster, according to Gallo, was the one who requested that he speak with the employees, and Gallo simply acquiesced, saying, "[T]hen let's get on with it."

Gallo then spoke to the store manager and asked if he and Hook could take a couple of minutes to answer questions that the employees might have. He told the manager not to involve himself in any way with the decertification matter. During the meeting with the employees Gallo simply asked whether the employees had any questions about decertification, after advising them as follows: "From our company's perspective it's really their decision whether or not they want the union or don't want the union. From, you know, we felt that we'd had a good relationship with the union over the years. We'd negotiated in the past and, you know, it was really their call. I was there at the request of one of the employee's overgrowing concerns of numerous employees and I was there to answer any of their questions."

According to Gallo, the employees wanted to know what would happen if "the Union was voted out what specifically would the company do with regards to benefits and wages and those types of issues." And Gallo replied, "I can't answer those questions, you know." Gallo simply responded, "We'll work with union/non-union stores, it doesn't matter." Gallo told them that fewer than 300 of the Respondent's 1500 stores are union, and whatever the employees want is up to them. He did not distribute any documents and had no employee benefit booklets. Gallo emphasized that he "made it very clear to them that it's inappropriate during the phase that they were at to discuss anything with regards to benefits, wages, vacations, holidays, and of those types of issues and basically as I told them, I said, you know, I'm not going to stand here and promise things to you, that's not the purpose of my visit . . . The purpose of my visit is to make sure that I understand any of the questions that you may have about the petition that's going around." Thus, Gallo repeatedly testified that he was just there to answer questions about the petition process, and he told the employees that if a majority of them in the unit didn't want the Union, then "whenever the petition is circulated and the signatures are gathered and mailed in, then we will advise the Union that the employees no longer want to be represented."

Gallo testified that he and Hook visited a total of seven stores in the ten-store unit that day with the same message: They told each store manage not to get involved in a dialogue about benefits, and during each meeting with the employees Gallo said that they were there because of a contact from Troy Foster regarding the growing concerns of employees who no longer wanted to be represented by the Union, and that they were there to answer any questions the employees may have about this matter.

Gallo testified about his meeting with Charles Cooper at one of the stores. According to Gallo he specifically wanted to go to that store to talk with Cooper because of an accident Cooper had incurred, in order to find out how his recovery was progressing and whether all of the Workers' Compensation benefits to which he was entitled were being furnished him. Gallo and Hook spoke with Cooper for a few minutes about his injury, and then there was discussion about the Union. And, according to Gallo, "it basically got into the dialog of, you know, about the petition that was going around." He told Cooper, "[You] know, you've got an employee in this store that has a petition that he's circulating out of frustration . . . I'm here to answer any questions you have and so if there's anything specific I can answer regarding that I'll be more than happy to do that." Cooper asked him, "Well what's the difference between the company's programs and the union's programs. And, you know, do I have any booklets or anything that I can give him so he can show in contrast what would be the better of the two." And Gallo replied, "[We're] in no position at this point, in this process to talk about benefits, wages, or any of things (sic); and it would be inappropriate to do so."

According to Gallo, Cooper asked for a copy of the employee handbook for nonunion employees, and Gallo said that it would be inappropriate to give it to him as, "what we're just trying to ascertain at this point is if people have questions about he petition that's being circulated." Cooper said that he had questions about benefits and insurance, and Gallo repeated that that it was too early to talk about that right now. Gallo did not provide Cooper with any papers, or suggest that he send a letter to any address or give him any phone numbers. He told Cooper that the company would go with what the majority of the unit employees wanted. Cooper was the union steward in the store at the time. This conversation lasted about 10 minutes.

Gallo testified that he and Hook visited the National City store and spoke with Damian Spears and two other employees, including Art Abenes. Spears was concerned with the issue of progressive discipline and discharges in the event there was no union to protect the interests of employees. Gallo told him that the Company's disciplinary policy applies whether or not there is a union, and that each of the Respondent's 1500 stores have a similar progressive discipline policy. This discussion was initiated by Spears. There were two other shop employees present.

Gallo described the foregoing meetings as generally "pretty much a standard drill," where employees wanted to know about benefits and Gallo and Hook cut them off and responded that they could not talk about such things and were not there for that purpose as, "We were not going to discuss benefits or wages until we found out what the majority of employees wanted." Gallo testified that during the meetings he did not make any representations to the employees about what might happen to wages or benefits if the employees decided they no longer wanted to be represented by the Union; nor did he refer to any employee benefits booklet or provide any information about benefits in non-union stores. Gallo had no meetings with employees in the three-store unit.

District Manger Scott Hook, who, together with Gallo visited each of the seven stores and participated in the foregoing meetings with employees, did not testify in this proceeding. However, he was present in the hearing room for the duration of the hearing, and the only reason given for not calling him as a witness was that his testimony would be "substantially duplicative" of the testimony given by Gallo.

C. Analysis and Conclusions

The record evidence is clear that shortly after an initial inquiry from one employee regarding decertification, the Respondent faxed to that employee the wording of a petition to be used for such purposes, and requested that the petition be submitted to the Respondent's headquarters.[6] However, even prior to the time any such petitions were submitted to the Respondent or, insofar as the record shows, even before any employee began circulating a petition, Human Resources Manager Johan Gallo and District Manger Scott Hook visited seven of the ten stores in the ten-store unit and conducted meetings with the unit employees. What was said to employees during these visits is of determinative significance. Thus, it is the Respondent's contention that Gallo and Hook answered questions only about the decertification process, and refrained from answering other questions about benefits, or what the employees could expect in the absence of union representation, as such matters were deemed to be strictly "off limits" at that early point in time.

Contrary to the contentions and evidence proffered by the Respondent, I find that the visits by Gallo and Hook constituted a blatant and unequivocal attempt to capitalize on the alleged dissatisfaction of a limited number of employees, namely, Foster and, as indicated by Foster to Gallo, several others, and thereupon the Respondent undertook the solicitation of all employees in order to get them to initiate petitions to get rid of the Union. This solicitation included promises that employee benefits in the absence of a union would be more favorable or at least would not be different than those they enjoyed under the union contract. I specifically do not credit the extensive testimony of Gallo, uncorroborated by any other witness, that Gallo and Hook did not discuss benefits with the employees or attempt to persuade employees that they would be better off without the Union. Indeed, even Foster, a current employee who was disenchanted with the Union and initiated the first contact with the Respondent, testified that Gallo and Hook talked "about the benefits of non-Union stores I think. They didn't really speak about it but they told us there's things in the works about it . . . Yeah. That they were putting it together or something . . . The company was putting it together."

And I credit the testimony of Cooper, a current employee, and find that Hook and Gallo told him during a private conversation that "[t]hey [the Respondent] wanted to give us better

[6] I credit Foster's account of this initial conversation.

benefits and stuff," and that if the stores went nonunion "they would be able to give us more benefits," because, "There's so much more they could do for us," if the employees were no longer represented by the Union. Thereafter, Cooper solicited other employees to decertify the Union.

And I credit the testimony of Jornlin who heard Hook or Gallo say that certain employee benefits would not change and would stay the same "if we signed something to get the Union out."

And I credit the testimony of Spears who testified that Hook said that the employees didn't need the Union; that his nonunion stores had better sick leave and better holidays; and that there was no advantage to having a union in his company. Further, I find that Gallo reiterated this theme and said, "What do you need the Union for, they're no good. They're going to be gone anyhow. And there was really no purpose for the Union there." Additionally, according to Spears, either Hook or Gallo said that in the nonunion stores the sick leave and holiday benefits were better and both of them kept "rattling on about the Union wasn't needed . . . There's no purpose—you know, what are we gaining out of having a Union." Indeed, when Spears directly asked what the employees could expect in the absence of a union, Hook directly replied that things would be better because the employees would have better benefits.

In addition to crediting the testimony of the aforementioned employees, it is highly significant that Hook was not called as a witness to corroborate Gallo's denials that any such things were said. I find that the Respondent's failure to call Hook as a witness despite clear and determinative credibility conflicts, under the circumstances, warrants the adverse inference that Hook's testimony would not corroborate the denials by Gallo and in fact would have supported the testimony of those employees who testified adversely to Gallo. *International Automated Machines*, 285 NLRB 1122 (1987).

Accordingly, I find that by such conduct the Respondent has violated Section 8(a)(1) of the act by providing unlawful assistance and support for the decertification petitions and by promising similar or more favorable benefits in the event the employees initiate and sign such petitions. *Clinton Food 4 Less*, 288 NLRB 597, 605 (1988); *Central Washington Hospital*, 279 NLRB 60, 64–65 (1986); *Fabric Warehouse*, 294 NLRB 189 (1989), enfd. 902 F.2d 28 (4th Cir. 1990). As a result of such unlawful assistance, the Respondent's reliance upon the petitions is impermissible and its withdrawal of recognition in the ten-store unit is violative of Section 8(a)(5) of the Act.

Further, I find that the Respondent's failure to furnish the requested bargaining unit information to the Union in a complete and timely fashion is violative of Section 8(a)(5) of the Act. The Union is clearly entitled to such information as it is presumptively relevant. *Tom's Ford, Inc.*, 253 NLRB 888, 895 (1980). Moreover, the Respondent has given no persuasive reason for deviating from past practice and for precipitously, without any prior notification to or bargaining with the Union, requiring employees to sign authorization forms in order to release their addresses to the Union. See *Burkart Foam*, 283 NLRB 351, 356 (1987), enfd. 848 F.2d 825 (7th Cir. 1988). Further, under the circumstances, and particularly in light of the other concurrent unfair labor practices, the requirement that employees sign such an authorization is tantamount to taking an unlawful poll of employees in order to ascertain the Union's strength among the unit members and is violative of Section 8(a)(5) of the Act. *Northwest Pipe & Casing Co.*, 300 NLRB 726, 733 (1990).

Moreover, in agreement with the contentions of the General Counsel, as supported by the record evidence, I find that the Respondent was in a much more favorable position than the Union to know the current addresses of unit employees and that it is reasonable to presume, under the circumstances, that the Respondent's failure in not timely and completely providing such necessary information to the Union, even in the absence of any other unlawful conduct, is, standing alone, sufficient to invalidate the Respondent's withdrawal of recognition. Thus, in the ten-store unit it appears that, at best, a bare majority of unit employees signed such petitions,[7] and the Respondent presented evidence that a common reason for signing such petitions was because employees felt abandoned due to an alleged lack of communication from the Union. It is reasonable to assume that had the Union been able to communicate with *all* the unit employees in a timely fashion at this critical juncture in the bargaining relationship, as it attempted to do by writing to those unit members whose addresses it had in order to obtain their input for the upcoming bargaining negotiations, at least some employees may have refrained from signing the petition. Indeed, in the absence of any other convincing rationale for the change in policy, it is probable that the Respondent failed to comply with the Union's request for information not for any reasons of privacy or confidentiality, but for the very purpose of precluding the Union from communicating with the employees it represented, and for the further purpose of implying to employees that communication from the Union would not be in their best interests. I find that failing to timely provide such information, withholding the addresses of employees from the Union, and bypassing the Union and dealing directly with employees by requiring that they sign an authorization form in order to release their addresses to the Union, are each independent violations of Section 8(a)(5) of the Act, as alleged. See *Detroit Edison Co.*, 310 NLRB 564, 564–565 (1993).

There remains the matter of the three-store unit. The limited record evidence shows that the petition for decertification in the three-store unit, as a result of which the Respondent withdrew recognition from the Union, was signed by a majority of employees and that it followed shortly after the withdrawal of recognition in the ten-store unit. While there is no independent evidence showing that the Respondent directly solicited such a petition or engaged in the same course of conduct as in the much larger ten-store unit, it is reasonable to assume that there was a causal relationship between the earlier withdrawal of recognition in the ten-store unit and the subsequent circulation of the deauthorization petition in the three-store unit.

Indeed, the record shows that the two units, each located within the same geographic area, were distinct only because of historical happenstance. The employees in the two units were

[7] The Union argues that in fact the petitions lacked majority of signatures. It appears unnecessary to analyze this issue under the circumstances, as it is not determinative of the result herein.

governed by identical contracts and maintained contact with one-another, and employees in the three-store unit received assistance in the decertification process from members of the ten-store unit; in practicality, they shared a total community of interest except for the separate expiration dates of their contracts. Moreover, it is reasonable to presume that employees in the smaller unit would likely follow the lead of the employees in the larger ten-store unit for the sake of uniformity because both units had such identical interests and experience over a lengthy period of time. Finally, the Respondent has not presented any evidence to show that its blatantly unlawful solicitation of employees in the ten-store unit did not also taint its withdrawal of recognition in the three-store unit. Under the circumstances a causal connection between the Respondent's unlawful conduct in the ten-store unit and subsequent employee disaffection in the three-store unit is clear. I therefore find that the Respondent's withdrawal of recognition in the three-store unit, and its failure to furnish the Union with requested bargaining information for such unit employees, is violative of Section 8(a)(5) of the Act. *Guerdon Industries*, 218 NLRB 658, 660–662 (1975); *Lee Lumber & Material Corp.*, 322 NLRB 175, 177 (1996).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act as alleged in the complaint, as amended at the hearing, and as found above.

THE REMEDY

Having found that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights under Section 7 of the Act. The Respondent shall be required, upon request, to recognize and bargain in good faith with the Union in each unit, and if an understanding is reached, to embody such understanding in a collective-bargaining agreement. In addition, the Respondent shall be required, upon request, to furnish the Union with current bargaining unit information in a timely fashion. Also, the Respondent shall be required to post an appropriate notice, attached hereto as "Appendix" at each of its stores involved herein.

[Recommended Order omitted from publication.]